



FEDERAL ELECTION COMMISSION
Washington, DC 20463

APR 27 2018

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Noah Bookbinder
Citizens for Responsibility and Ethics in Washington
455 Massachusetts Avenue, NW, Sixth Floor
Washington, DC 20001

RE: MUR 7013

Dear Mr. Bookbinder:

On April 10 and 24, 2018, the Federal Election Commission considered the allegations contained in your complaint received on February 19, 2016, concerning IGX, LLC, Andrew Duncan, and Conservative Solutions PAC and Nancy H. Watkins in her official capacity as treasurer. On April 10, 2018, based on the Complaint and Respondents' responses, the Commission found no reason to believe that Conservative Solutions PAC and Nancy H. Watkins in her official capacity as treasurer violated 52 U.S.C. § 30122, and found no reason to believe that IGX, LLC, violated 52 U.S.C. §§ 30102, 30103, & 30104. The Commission was equally divided on whether IGX, LLC, and Andrew Duncan violated 52 U.S.C. § 30122. On April 24, 2018, the Commission approved the enclosed Factual and Legal Analyses, which more fully explain the Commission's findings of no reason to believe. This matter is now closed.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Saurav Ghosh at (202) 694-1643.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Shonkwiler", written over a horizontal line.

Mark D. Shonkwiler

Enclosures

Factual and Legal Analysis (IGX, LLC)
Factual and Legal Analysis (Conservative Solutions PAC)

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Conservative Solutions PAC
4 and Nancy Watkins in her
5 official capacity as treasurer
6

MURs: 7013 / 7015

7 **I. GENERATION OF MATTER**

8 This matter was generated by two complaints filed with the Federal Election Commission
9 ("Commission") by the Citizens for Responsibility and Ethics in Washington and Noah
10 Bookbinder, and Campaign Legal Center, Democracy 21, J. Gerald Hebert, Paul S. Ryan, and
11 Tara Malloy. See 52 U.S.C. § 30109(a)(1). Conservative Solutions PAC and Nancy Watkins in
12 her official capacity as treasurer ("CSPAC"), an independent-expenditure-only political
13 committee supporting the 2016 presidential campaign of Marco Rubio, received a \$500,000
14 contribution that it attributed to IGX, LLC ("IGX") in its disclosure report to the Commission.
15 Complainants allege that Andrew Duncan violated 52 U.S.C. § 30122, a provision of the Federal
16 Election Campaign Act of 1971, as amended ("Act"), by making that contribution in the name of
17 IGX, and that IGX knowingly permitted its name to be used to make, and CSPAC knowingly
18 accepted, a contribution in the name of another. For the reasons explained below, the
19 Commission finds no reason to believe that CSPAC violated 52 U.S.C. § 30122.

20 **II. FACTUAL AND LEGAL ANALYSIS**

21 **A. Factual Background**

22 IGX, LLC is a limited liability company formed in Delaware on May 13, 2015.¹ IGX was
23 reported as making a \$500,000 contribution to CSPAC on October 26, 2015.²

¹ "IGX LLC" Dun & Bradstreet Report. IGX's registered agent is the Corporation Service Company located at 2711 Centerville Rd., Suite 400, Wilmington, DE, 19808; that address is provided on CSPAC's report disclosing the IGX contribution to the Commission.

1 Andrew Duncan is the CEO and “member/owner” of IGX, LLC and describes IGX as an
2 investment vehicle for entertainment and technology projects.³ He claims that his “employment
3 with IGX is publicly known,” citing a disclosure report filed with the Commission disclosing
4 Duncan’s personal contribution to Marco Rubio’s authorized committee.⁴

5 Conservative Solutions PAC is an independent-expenditure-only committee that
6 registered with the Commission on February 4, 2013. Nancy Watkins is its treasurer of record.
7 During the 2016 election cycle, CSPAC has received over \$60 million in contributions and made
8 over \$55 million in independent expenditures supporting Marco Rubio or opposing Rubio’s
9 opponents in the 2016 presidential election.⁵ CSPAC reported receiving a \$500,000 contribution
10 from IGX on October 26, 2015.⁶

11 **B. Contributions in the Name of Another**

12 **1. Legal Standard**

13 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
14 deposit of money or anything of value made by any person for the purpose of influencing any
15 election for Federal office.”⁷ The term “person” for purposes of the Act and Commission
16 regulations includes partnerships, corporations, and “any other organization or group of

² CSPAC, 2015 Year-End Report at 26 (Jan. 31, 2016).

³ Duncan Resp. at 2 (Apr. 26, 2016).

⁴ Duncan Resp. at 2; *see* Marco Rubio for President, Amend. 2015 Oct. Quarterly Report at 736 (Oct. 30, 2015).

⁵ *See, e.g.*, 24/48 Hour Independent Expenditure Report (“IE Report”) Mar. 11, 2016 (supporting Marco Rubio); IE Report, Feb. 16, 2016 (opposing Jeb Bush).

⁶ CSPAC, 2015 Year-End Report at 26 (Jan. 31, 2016).

⁷ 52 U.S.C. § 30101(8)(A).

persons.”⁸ The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.⁹ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.¹⁰

The Act and the Commission’s implementing regulations provide that a person who furnishes another with funds for the purpose of contributing to a candidate or committee “makes” the resulting contribution.¹¹ This is true whether funds are advanced to another person to make a contribution in that person’s name or promised as reimbursement of a solicited contribution.¹²

⁸ *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that “all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. *See* 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to “contributions by a person made on behalf of or to a candidate.” *Id.* By their terms, neither the earmarking provision of the Act nor the Commission’s implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

⁹ 52 U.S.C. § 30122.

¹⁰ 11 C.F.R. § 110.4(b)(2)(i)–(ii). *See* First Gen. Counsel’s Report, MUR 6930 (Prakazrel “Pras” Michel, *et al.*).

¹¹ *See United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011) (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *United States v. O’Donnell*, 608 F.3d 546, 550 (9th Cir. 2010); *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

¹² *O’Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074,

1 2. Analysis

2 There is no factual support in the record supporting the allegation that CSPAC may have
3 knowingly accepted a contribution in the name of another. There is no evidence that CSPAC
4 was in contact with Duncan or IGX, or that CSPAC had any reasonable basis to suspect that the
5 IGX contribution was made in the name of another. Moreover, CSPAC's treasurer submitted a
6 sworn affidavit stating that she "had no reason to believe that the contribution from IGX, LLC
7 was from any source other than IGX, LLC."¹³ On this record, therefore, the Commission finds
8 no reason to believe that Conservative Solutions PAC and Nancy H. Watkins in her official
9 capacity as treasurer violated 52 U.S.C. § 30122 as alleged.

1080 (9th Cir. 2015) (holding that defendant's "unconditional gifts" to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

¹³ See Affidavit of Nancy Watkins at ¶ 14.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 RESPONDENT: IGX, LLC

MURs: 7013 / 7015

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7 **I. GENERATION OF MATTER**

8 This matter was generated by two complaints filed with the Federal Election Commission
9 ("Commission") by the Citizens for Responsibility and Ethics in Washington and Noah
10 Bookbinder, and Campaign Legal Center, Democracy 21, J. Gerald Hebert, Paul S. Ryan, and
11 Tara Malloy. *See* 52 U.S.C. § 30109(a)(1). Conservative Solutions PAC and Nancy Watkins in
12 her official capacity as treasurer ("CSPAC"), an independent-expenditure-only political
13 committee supporting the 2016 presidential campaign of Marco Rubio, received a \$500,000
14 contribution that it attributed to IGX, LLC ("IGX") in its disclosure report to the Commission.
15 Complainants allege that Andrew Duncan violated 52 U.S.C. § 30122, a provision of the Federal
16 Election Campaign Act of 1971, as amended ("Act"), by making that contribution in the name of
17 IGX, and that IGX knowingly permitted its name to be used to make, and CSPAC knowingly
18 accepted, a contribution in the name of another. Complainants also allege that IGX violated
19 52 U.S.C. §§ 30102, 30103, 30104 by failing to register and report as a political committee as
20 required under the Act.

21 For the reasons explained below, the Commission finds no reason to believe that IGX,
22 LLC violated 52 U.S.C. §§ 30102, 30103, 30104 by failing to register and report as a political
23 committee.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 IGX, LLC is a limited liability company formed in Delaware on May 13, 2015.¹ IGX was
4 reported as making a \$500,000 contribution to CSPAC on October 26, 2015.²

5 Andrew Duncan is the CEO and “member/owner” of IGX, LLC and describes IGX as an
6 investment vehicle for entertainment and technology projects.³ He claims that his “employment
7 with IGX is publicly known,” citing a disclosure report filed with the Commission disclosing
8 Duncan’s personal contribution to Marco Rubio’s authorized committee.⁴

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10 registered with the Commission on February 4, 2013. Nancy Watkins is its treasurer of record.
11 During the 2016 election cycle, CSPAC has received over \$60 million in contributions and made
12 over \$55 million in independent expenditures supporting Marco Rubio or opposing Rubio’s
13 opponents in the 2016 presidential election.⁵ CSPAC reported receiving a \$500,000 contribution
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² CSPAC, 2015 Year-End Report at 26 (Jan. 31, 2016).

³ Duncan Resp. at 2 (Apr. 26, 2016).

⁴ Duncan Resp. at 2; *see* Marco Rubio for President, Amend. 2015 Oct. Quarterly Report at 736 (Oct. 30, 2015).

⁵ *See, e.g.*, 24/48 Hour Independent Expenditure Report (“IE Report”) Mar. 11, 2016 (supporting Marco Rubio); IE Report, Feb. 16, 2016 (opposing Jeb Bush).

⁶ CSPAC, 2015 Year-End Report at 26 (Jan. 31, 2016).

1 **B. Political Committee Status**

2 1. Legal Standard

3 The Act defines a political committee as “any committee, club, association, or other
4 group of persons” that receives aggregate contributions or makes aggregate expenditures in
5 excess of \$1,000 during a calendar year.⁷ Notwithstanding the threshold for contributions and
6 expenditures, an organization will be considered a political committee only if its “major purpose
7 is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”⁸ Political
8 committees are required to register with the Commission, meet organizational and recordkeeping
9 requirements, and file periodic disclosure reports.⁹

10 2. Analysis

11 Regardless of whether IGX met the statutory threshold for political committee status, the
12 record does not indicate that nominating or electing Federal candidates was the LLC’s “major
13 purpose.” The record indicates that while IGX made a one-time political contribution to an
14 independent-expenditure-only committee, IGX appears to operate “as an investment vehicle for
15 film/entertainment and technology endeavors” and not for “any political purpose,”¹⁰ Duncan so
16 stated in his response, and there is no available information in the record before the Commission

7 52 U.S.C. § 30101(4)(A).

8 Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

9 *See* 52 U.S.C. §§ 30102; 30103; 30104.

10 Duncan Resp. at 2; *see also* June Pictures, LLC, Form LLC-12 Statement of Information filed with California Secretary of State (Apr. 4, 2018), <https://businesssearch.sos.ca.gov/CBS/SearchResults?SearchType=LPLLC&SearchCriteria=June+Pictures&SearchSubType=Keyword> (disclosing IGX, LLC as the sole manager/member of June Pictures, LLC, a California “film production” company); Press Release, Oklahoma Film & Music Office, “Wildlife” Begins Filming in Oklahoma (Oct. 31, 2016), https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=200&article_id=26606.

- 1 establishing otherwise. Accordingly, the Commission finds no reason to believe that IGX, LLC
- 2 violated 52 U.S.C. §§ 30102, 30103, 30104 as alleged.